IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 580 of 2006

Date of decision : 4th December, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 580 of 2006

The New India Assurance Co. Ltd.,
Having its Head Office at 87 Mahatma Gandhi Road,
Fort, Mumbai and amongst others
a Branch Office at Dehradun Road, Rishikesh,
through Senior Divisional Manager,
The New India Assurance Co. Ltd.,
Divisional Office, Astley Hall, Dehradun. …… Appellant

Versus

1. Sh. Bhagwan Singh S/o Sri Madan Singh,
   R/o Village Kaluwala, P.O. Badowala,
   District Dehradun.
2. Smt. Asha Devi W/o Sri Bhagwan Singh,
   R/o Village Kaluwala, P.S. Badowala,
   District Dehradun.
3. Sh. Surat Singh Sajwan S/o Sri Fatesh Singh Sajwan,
   R/o Village Bamana, P.O. Kharsadi,
   District Tehri Garhwal. ……. Respondents

Mr. V.K. Kohli, Senior Counsel with Mr. I.P. Kohli, Advocate for the appellant.
Mr. Kishore Kumar, Advocate on behalf of Mr. Ramji Srivastava, Advocate for respondents Nos. 1 & 2.
None for respondent No. 3.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C. J. (Oral)

This is insurer's appeal against the Award dated 19.08.2006 passed by Motor Accident Claims Tribunal / Addl. District Judge, Dehradun in M.A.C.P. No. 209 of 2005.

2. The claimants, who are unfortunate parents of deceased Sumit Solanki, claimed compensation of Rs. 15,20,000/- (Rupees Fifteen Lakhs and Twenty Thousand only) by filing a claim petition under Section 166 of the Motor Vehicles Act for the death of their son Sumit Solanki in the motor accident on 09.07.2005 when the Bus bearing

registration No. U.P. 08-3031, in which he was traveling from Pauri Khal to Rishikesh, met with an accident due to the rash and negligent driving of its driver and fell in a gorge resulting in multiple serious injuries to Sumit Solanki, who succumbed to those injuries on his way to Doon Hospital, Dehradun. The claimants pleaded that their son Sumit Solanki used to earn Rs. 5,000/- per month.

3. The owner and the insurer of the offending vehicle Bus contested the claim and denied their liability to pay compensation to the claimants. The owner took the plea that the driver of the Bus was not responsible for the accident, whereas the insurer pleaded that the Bus was being plied in breach of the policy conditions and the driver of the Bus was not holding a valid driving license.

4. The claimants examined P.W.1 Bhagwan Singh, P.W.2 Atul Panwar and P.W.3 Rohit Panwar in support of their claim, whereas the owner of the Bus examined DW1 Surat Singh and DW2 Gulab Singh Rawat in rebuttal. The insurer of the Bus also examined DW3 Sushil Kumar Sharma, its Investigator.

5. The Tribunal, on a thorough scrutiny of the evidence led by the parties, held that claimants' son Sumit Solanki died on account of the injuries sustained by him in the motor accident on 09.07.2005; the accident occurred due to the rash and negligent driving of the driver of the Bus; and the insurer of the Bus was liable to pay compensation to the claimants.

6. As the evidence led by the claimants about the income of the deceased was not found reliable, the Tribunal assessed his income on it's own estimate at Rs. 100/- per day and Rs. 3,000/- per month. By deducting 1/3rd of the said amount as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 2,000/- per month and Rs. 24,000/- per annum. By multiplying the annual

dependency of Rs. 24,000/- with the multiplier of '15', the compensation was worked out to Rs. 3,60,000/-. The Tribunal awarded further sum of Rs. 2,000/- towards Funeral Expenses and thus, a total sum of Rs. 3,62,000/- was awarded as compensation to the claimants for the death of their son Sumit Solanki in the motor accident. The Tribunal, further, directed the insurer of the Bus to pay interest at the rate of 9% per annum from the date of the claim petition.

7. Mr. V.K. Kohli, the learned Senior Counsel for the appellant Insurance Company submitted that as the appellant Insurance Company was granted permission under Section 170 of the Motor Vehicles Act to contest the claim on all available defences, the quantum of the compensation awarded by the Tribunal is being challenged in this appeal filed at the behest of the insurer of the Bus. The learned Senior Counsel further submitted that the Tribunal has erred in assessing the income of the deceased at Rs. 3,000/- per month; in selecting the higher multiplier of '15'; and in awarding interest at the higher rate of 9% per annum.

8. Mr. Kishore Kumar, the learned counsel for the claimants, on the other hand, supported the Award and submitted that the compensation of Rs. 3,62,000/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the case.

9. Neither in the Memo of Appeal nor during the course of hearing, the findings recorded by the Tribunal that claimants' son Sumit Solanki died on account of the injuries sustained by him in the motor accident on 09.07.2005; the accident occurred due to the rash and negligent driving of the driver of the Bus; and the insurer of the Bus was liable to pay compensation to the claimants, have been challenged. Even otherwise, there is ample evidence on record to

establish the above facts. We, therefore, affirm the findings recorded by the Tribunal in that behalf.

10. The Tribunal found the evidence led by the claimants about the income of the deceased unreliable and therefore, assessed his income at Rs. 3,000/- per month and Rs. 36,000/- per annum. As the deceased was aged about 26 years on the date of the accident, he could have easily earned Rs. 100/- per day even as an unskilled labourer. We, therefore, do not find any infirmity in the assessment of the income of the deceased by the Tribunal at Rs. 100/- per day; Rs. 3,000/- per month; and Rs. 36,000/- per annum. The claimants' dependency also has been rightly assessed by the Tribunal at Rs. 24,000/- per annum by deducting 1/3rd of the income of the deceased as his personal expenses.

11. The multiplier of '15' selected by the Tribunal is certainly on the higher side in view of the dictum of the Apex Court in the case of **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another** reported in **(2003) 8 SCC 731,** wherein it has been held that in those cases, where the claimants are parents of the deceased, the multiplier should never exceed '10'. In the present case, the father of the deceased was aged about 48 years on the date of the accident, whereas his mother was aged about 44 years. In our opinion, multiplier of '10' would be appropriate in the present case.

12. By multiplying the annual dependency of Rs. 24,000/- with the multiplier of '10', the compensation works out to Rs. 2,40,000/-. The claimant are further entitled to Rs. 5,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Estate. Thus, the claimants become entitled to receive a total sum of Rs. 2,50,000/- as compensation for the death of their son Sumit Solanki in the motor accident on 09.07.2005.

13. The interest awarded by the Tribunal at the rate of 9% per annum is also on the higher side in view of the prevalent rate of interest on the bank deposits. In our opinion, interest at the rate of 7% per annum would be just and proper. We, therefore, modify the rate of interest from 9% per annum to 7% per annum.

14. For the foregoing reasons, the appeal filed by the insurer of the Bus is allowed in part. The compensation of Rs. 3,62,000/- (Rupees Three Lakhs and Sixty Two Thousand only) awarded by the Tribunal is modified to Rs. 2,50,000/- (Rupees Two Lakhs and Fifty Thousand only). The amount of compensation shall carry interest at the rate of 7% per annum from the date of the claim petition.

15. The sum of Rs. 25,000/- (Rupees Twenty Five Thousand only), deposited by the appellant Insurance Company as mandatory deposit while filing this appeal, be remitted to the concerning Claims Tribunal immediately.

16. A sum of Rs. 2,50,000/- has been deposited by the appellant Insurance Company before the concerning Claims Tribunal in compliance of the order dated 27.09.2006. Rs. 25,000/- is to be transmitted by the Registry to the concerning Claims Tribunal. Thus, the appellant Insurance Company has deposited a total sum of Rs. 2,75,000/- (Rupees Two Lakhs and Seventy Five Thousand only). After payment of the compensation of Rs. 2,50,000/- and interest @ 7% per annum to the claimants, if any amount remains in balance, the same shall be released in favour of the appellant Insurance Company.

17. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**
04.12.2006 04.12.2006

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A.O.No.580 of 2006

Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J

Mr. V.K. Kohli, Senior Counsel with Mr. I.P. Kohli, Advocate for the appellant.

Mr. Kishore Kumar, Advocate on behalf of Mr. Ramji Srivastava, Advocate for respondents Nos. 1 & 2.

None for respondent No.3.

Though the appeal is listed today for orders on CLMA No. 14551 of 2006(Money Withrawal Application) filed by the claimants, as the learned counsel for the parties are prepared and willing to argue the appeal finally, the appeal is finally heard.

Judgment dictated in the open Court passed on separate sheet.

With the above order, CLMA No. 14551 of 2006 also stands disposed of .

(J.C.S.R.,J.) **(R.G.,C.J.)**
04.12.2006 04.12.2006
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